

**NOTICE OF PUBLIC HEARING
BEFORE THE THURSTON COUNTY BOARD OF COUNTY COMMISSIONERS**

PURPOSE: Public hearing to receive testimony on a proposed ordinance regarding the Nisqually Reach Shellfish Protection District to: amend the District boundaries; establish financing for an on-site sewage system operation and maintenance program by fixing rates and charges within an area of the Nisqually Reach Shellfish Protection District; and to amend the Henderson Inlet Shellfish Protection District and Nisqually Reach Shellfish Protection District Consolidated Work Program to specify the program financing through rates and charges.

Copies of the proposed ordinance will be available beginning September 19, 2011 at the Thurston County Health Department, Environmental Health Division, Building 1, Thurston County Courthouse, 2000 Lakeridge Drive SW, Olympia, WA 98502; at the Nisqually Reach Watershed internet site at <http://www.co.thurston.wa.us/health/ehrp/nisqually.html>; and will be mailed upon request.

**DATE, TIME
and PLACE:** October 13, 2011 at 6:30 PM.
Thurston County Fairgrounds
Expo Center
3054 Carpenter Rd SE
Olympia, Washington

**CONTACT
PERSON:** Art Starry / Sue Davis
(360) 867-2587 and (360) 867-2643

DISABILITIES: Citizens with disabilities requiring special accommodation at the hearing should call (360) 786-5440 by 10:00 a.m. at least 3 days prior to the hearing. Citizens with hearing impairments may call the County's TDD line at (360) 754-2933.

Anyone interested may appear and be heard.

BOARD OF COUNTY COMMISSIONERS

By: _____
Clerk of the Board

APPROVED AS TO FORM:

JON TUNHEIM
PROSECUTING ATTORNEY

Jane Futterman
Deputy Prosecuting Attorney

ORDINANCE NO. _____

AN ORDINANCE amending the Nisqually Reach Shellfish Protection District boundaries, amending the Henderson Inlet Shellfish Protection District and Nisqually Reach Shellfish Protection District Consolidated Work Program, and fixing rates and charges to fund an on-site sewage system operation and maintenance program in the Nisqually Reach Shellfish Protection District.

WHEREAS, the Board of County Commissioners adopts the following findings:

1. On December 17, 2001, the Nisqually Reach Shellfish Protection District was created by Ordinance No. 12680, and a work program was adopted, after the Washington State Department of Health restricted commercial shellfish harvesting on 74 acres because of water quality degradation.

2. Within the Nisqually Reach commercial shellfish growing area between Johnson Point and the Nisqually River delta, 1,850 acres remain “Prohibited” to commercial shellfish harvest.

3. Studies performed by the Washington State Department of Ecology (Nisqually River Basin Fecal Coliform Bacteria and Dissolved Oxygen Total Maximum Daily Load Study, May 2005), Washington State Department of Health (Sanitary Survey of Nisqually Reach, July 2006 and 2005 Shoreline Survey of the Nisqually Reach Shellfish Growing Area, October 2005) and Thurston County Public Health and Social Services Department (Nisqually Reach Pollution Source Identification Task 5. DNA Typing Analysis, May 2004) identified on-site sewage systems as a source of contamination contributing to the water pollution in Nisqually Reach.

4. Through dye testing of septic systems along the Nisqually Reach shoreline between 1994 and 1999, Thurston County Public Health and Social Service Department found that 26 to 29 percent of the systems were failing, which is a failure rate at least twice as high as the failure rate for all of Thurston County’s marine shorelines.

5. Since the Shellfish Protection District was established in 2001, additional study of pollution sources, topography and drainage to Nisqually Reach has provided information for refining the District boundaries.

6. The Nisqually Reach Shellfish Protection District boundaries should be expanded to include the area near the lower reach of the Nisqually River because the shellfish growing area at the mouth of the Nisqually River is “prohibited” to commercial shellfish harvesting and septic system failures in the area near the lower reach of the Nisqually River have the potential to contribute pollution in the Nisqually Reach.

7. The *Thurston County On-site Sewage System Management Plan* adopted in accordance with ch. 246-272A WAC and ch. 70.118A RCW provides that an on-site sewage system monitoring, maintenance and education program should be developed and implemented for Nisqually Reach.

8. The Nisqually Reach Shellfish Protection District stakeholder committee has identified the regulation and testing of on-site sewage systems to reduce their impact as a source of pollution to Nisqually Reach as a priority for the District.

9. A program should be implemented to regulate proper operation and maintenance of on-site sewage systems if the shellfish protection district goal of improving water quality is to be achieved in an effort to upgrade conditionally approved, restricted, and prohibited shellfish beds.

10. An on-site sewage system operation and maintenance program will provide a means to address water quality degradation in Nisqually Reach resulting from on-site sewage systems.

11. To implement a comprehensive on-site sewage system operation and maintenance program within the Nisqually Reach Shellfish Protection District, a stable funding source is necessary.

12. RCW 90.72.070 authorizes the Board of County Commissioners to finance activities specified in the shellfish protection program through reasonable fees or rates or charges.

13. Providing financing for an on-site sewage system operation and maintenance program, to be carried out by Thurston County Public Health and Social Services Department, is consistent with the recommendations of the District stakeholders' committee.

14. The Henderson Inlet Shellfish Protection District and Nisqually Reach Shellfish Protection District Consolidated Work Program should be amended to specify that the Nisqually Reach on-site sewage system operation and maintenance program should be financed through rates and charges.

15. The proposed fees, rates and charges for the on-site sewage system operation and maintenance program are reasonable and are established at a level necessary to fund the program.

16. The boundary of the rate area for imposition of the on-site sewage system operation and maintenance charges should be limited to the portions of the Nisqually Reach Shellfish Protection District that are more likely to have an impact on water quality in Nisqually Reach, which includes the area shown on Exhibit B to this Ordinance.

17. The Thurston County Public Health and Social Services Department has determined that on-site sewage systems in the area of the shellfish protection district south of McAllister Creek are not likely to significantly contribute to bacterial pollution in Nisqually Reach due to the hydrologic characteristics of the sub-basin, so this area should be excluded from the rate area for the on-site sewage system operation and maintenance program.

18. The Board of Thurston County Commissioners held a public hearing on October 13, 2011.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF THURSTON COUNTY hereby ordains as follows:

Section 1. District Boundaries. The Nisqually Reach Shellfish Protection District boundaries are amended to include the area shown in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 2. Work Program. The Henderson Inlet Shellfish Protection District And Nisqually Reach Shellfish Protection District Consolidated Work Program, Phase 2, section IV(A) is amended to read as follows:

A. Septic System Additional Work Needed:

Failed onsite sewage systems (OSS) contribute fecal coliform bacteria and other forms of harmful contamination into the Henderson Inlet and the Nisqually Reach. There is currently no adequate mechanism in place by Thurston County to monitor or control the operation and maintenance of all onsite systems. Additional work is still needed to address the contribution of bacteria by on-site septic systems including:

1. Approve the continuation of staff working on developing a Septic System Operation and Maintenance Proposal for the Henderson Inlet Watershed. Prepare appropriate documents to implement the program for consideration of adoption by the Board of Health.
2. Consider expanding the program into the Nisqually Reach District once the O&M program is implemented in Henderson Inlet Watershed.
3. With approval of an On-site Sewage System Operation and Maintenance program for the Henderson Inlet watershed in the Sanitary Code for Thurston County, Henderson Inlet Shellfish Protection District rates and charges will be an appropriate mechanism to provide a consistent funding source. Rates and charges should be established at a reasonable level to carry out an operation and maintenance program for on-site sewage systems in areas that may be contributing to the fecal coliform contamination of Henderson Inlet.

4. With establishment of the Nisqually Reach Watershed Protection Area as a Marine Recovery Area and Area of Special Concern in the Sanitary Code for Thurston County, Nisqually Reach Shellfish Protection District rates and charges will be an appropriate mechanism to provide a consistent funding source to fund an on-site sewage system operation and maintenance program. Rates and charges should be established at a reasonable level to carry out an operation and maintenance program for on-site sewage systems in areas that may be contributing to the fecal coliform contamination of Nisqually Reach.

Section 3. Definitions. All terms used in this Ordinance that are defined in Article IV of the Sanitary Code for Thurston County, including Appendix A to Article IV, shall have the meanings given in the Sanitary Code.

Section 4. On-site Sewage System Operation and Maintenance Program Financing.

The Nisqually Reach on-site sewage system operation and maintenance program shall apply to the area shown in Exhibit B designated as the Nisqually Reach Watershed Protection Area established as a marine recovery area and area of special concern in Article IV of the Sanitary Code for Thurston County. The program and activities of the Nisqually Reach Shellfish Protection District to address on-site sewage system operation and maintenance of on-site sewage systems shall be financed as follows:

A. **Rates and Charges.** Beginning January 1, 2013 and each year thereafter, the following annual rates and charges shall apply to all properties served by on-site sewage systems where any portion of the wastewater system, including a building and any collection, transport, treatment or soil dispersal component, is within the Nisqually Reach Watershed Protection Area. EXCEPTION: If the property is subject to the Henderson Inlet Shellfish Protection District On-site Sewage System Operation and Maintenance rates and charges, only the rates and charges of the Henderson Inlet Shellfish Protection District On-site Sewage System Operation and Maintenance program will be charged.

If portions of a single on-site sewage system, other than a community on-site system (COSS), are present on more than one parcel, the lien for rates and charges shall only apply to the parcel where the sewage originates, as determined by the Thurston County Environmental Health Division. For a COSS, the lien for rates and charges shall apply to each property where the sewage originates and each property with a dispersal component.

Each year, the rates and charges shall be determined by improvements present on the property on June 30th of the previous year.

1. For the year 2013, the following charges shall apply to each parcel:
 - a. Charges for single family residences or unit volumes of sewage (UVS):

- i. \$60 per single family residence or unit volume of sewage (UVS), plus an additional \$10 for every additional residential unit or UVS; or
- ii. \$135.00 per single family residence or UVS served by a High Risk on-site sewage system, plus \$10 for every additional residential unit or UVS. Risk level is determined in accordance with Article IV, Appendix A of the Sanitary Code for Thurston County.

For sewage flow from sources other than a single-family residence, mobile home site in a mobile home park, food establishment or school, the number of UVS will be determined by the system design flow, or where none is established in Thurston County records, then other available data acceptable to the Health Officer, such as water-use figures or numbers of employees or plumbing fixtures.

- b. \$145 for each COSS dispersal component located off-site from where the sewage originates.
 - c. \$145 for each food establishment and school, except those served by a Large On-site Sewage System.
2. For each subsequent year after 2013, the charges shall be automatically adjusted on January 1 by the percentage increase, if any, in the June Consumer Price Index for the previous year. The maximum increase shall be 3.5%. “Consumer Price Index” for the purposes of this section shall mean the Urban Wage Earners and Clerical Workers Index for the Seattle-Tacoma-Bremerton area. All adjustments to the rates and charges based on the Consumer Price Index shall be rounded to the nearest whole dollar. An alternative calculation for automatically adjusting the charges may be adopted by further action of the Board of County Commissioners.

B. Exemptions

- 1. Senior/disabled exemption. The rates and charges on any parcel owned by a person who is currently granted an exemption under RCW 84.36.381 through .385 shall be reduced by 100%.
- 2. Properties exempted by RCW 90.72.070:
 - a. Confined animal feeding operations subject to the national pollutant discharge elimination system (NPDES) and implementing regulations.
 - b. Facilities permitted and assessed fees for wastewater discharge under the NPDES.
 - c. Lands classified as forest land under Chapter 84.33 RCW.
 - d. Lands classified as timber land under Chapter 84.34 RCW.

C. **Collection**

1. The rates and charges authorized by this ordinance shall be included in Thurston County's property tax statements and shall be collected by the Thurston County Treasurer along with and in the same manner as property taxes are collected, including foreclosure of delinquent liens.
2. The rates and charges, and any interest, shall be due and payable on or before the 30th day of April and shall be delinquent after that date; however, if one-half of the rates and charges are paid on or before the 30th day of April, the remainder shall be due and payable on or before the 31st day of October and shall be delinquent after that date.

D. **Lien.** The rates and charges imposed by this ordinance shall be a lien against the property charged, which lien shall be superior to all other liens and encumbrances except general taxes and local improvement district liens and special assessments. Such liens shall be effective on January 1 of each year.

E. **Delinquent charges.** Delinquent charges shall bear interest at the rate of 12% per annum, computed on a monthly basis and shall be included with the lien for the charges.

F. **Corrections.** If the Environmental Health Division Director, or the Director's designee, determines that the rates and charges assessed against any property were incorrect based on errors in billing, incorrectly identified property or the location of the wastewater system, the rates and charges may be corrected, provided that no corrections shall be allowed more than three years after the date payment was due without delinquency. Changes in the risk level of an on-site sewage system that result in adjustments to rates and charges assessed against any property shall be prospective only and no refund shall be allowed.

G. **Sunset.** The provisions of this section, entitled "On-site Sewage System Operation and Maintenance Program Financing", as may be hereafter amended, are repealed effective December 31, 2023 unless re-enacted by the Board of County Commissioners.

Section 5. Severability. If any term or provision of this Ordinance, or its application to any person or circumstance, is held to be invalid, illegal or unenforceable by any court or agency of competent jurisdiction, the remainder of this Ordinance, and the application of the provision to other persons or circumstances, shall not be affected.

Section 6. Effectiveness. This ordinance shall take effect immediately upon adoption.

ADOPTED: _____.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington

Clerk of the Board

Chairman

APPROVED AS TO FORM:

JON TUNHEIM
PROSECUTING ATTORNEY

Vice-chair

Jane Futterman
Deputy Prosecuting Attorney

Commissioner

EXHIBIT A

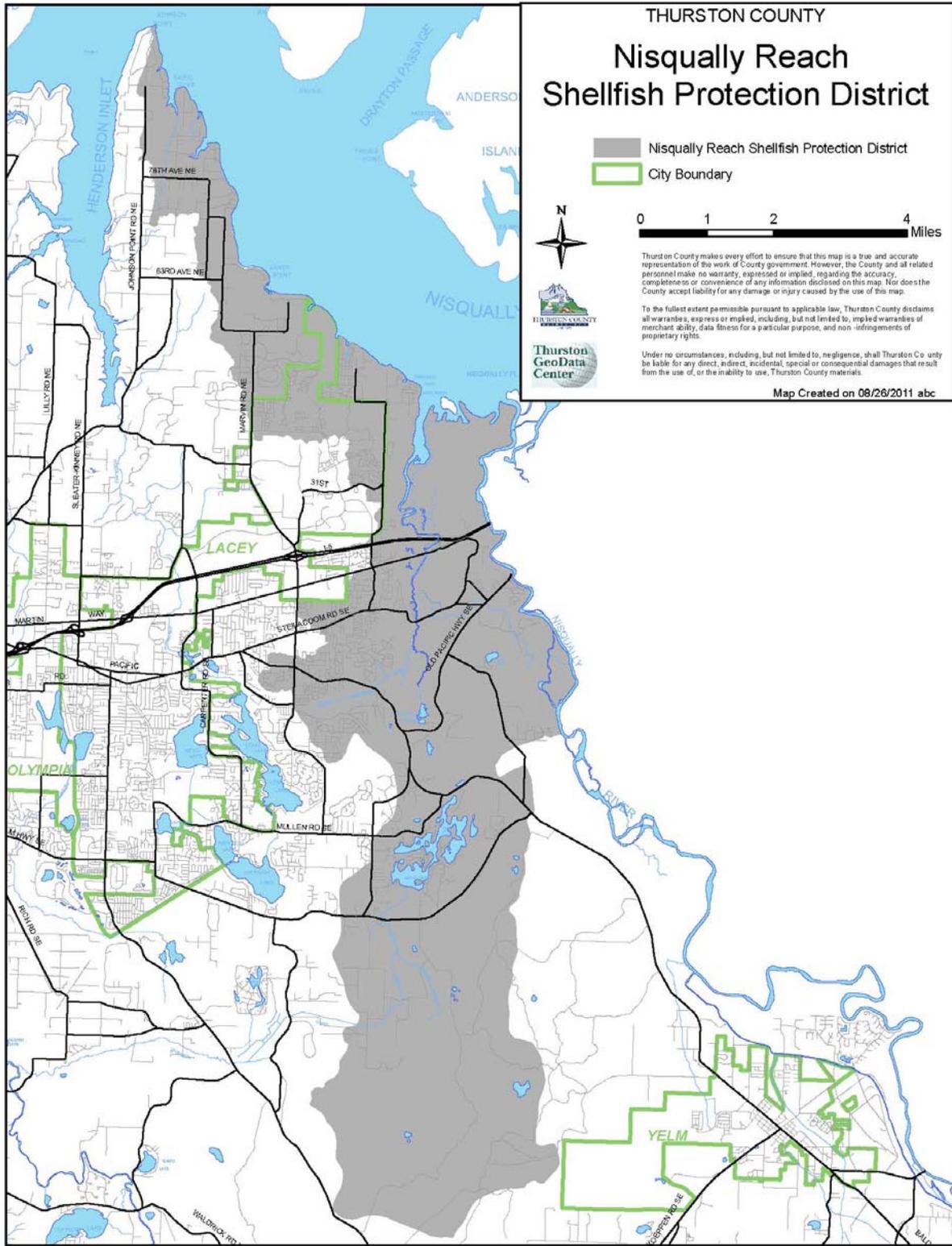


EXHIBIT B

